

AMENDMENTS TO THE DRAWINGS

Please amend pages 2/6, 3/6, 4/6, 5/6 and 6/6 of the drawings with the replacement sheets 2/6, 3/6, 4/6, 5/6 and 6/6 included with this amendment.

This amendment is requested to correct previously unnoticed, inadvertently omitted and/or misplaced reference numerals as described in the specification. Support for the reference numerals added to Figure 2 and Figure 3 may be found at page 18, lines 6-24. Support for the reference numeral added to Figure 4 may be found at page 19, line 16. Support for the reference numeral added to Figure 5 may be found at page 19, lines 27-30. Support for the correct placement of the reference numerals on Figure 6 may be found at page 20, lines 17-30. Support for the reference numerals added to Figure 7 and the correct placement of the reference numerals on Figure 7 may be found at page 21, lines 1-9

REMARKS

The applicant requests re-examination and reconsideration of the rejections presented in the March 22, 2006 Final Office Action. The applicant respectfully requests that the Examiner withdraw the finality of the rejections. As stated in M.P.E.P. §707.07 (Eighth Edition, August 2001, Latest Revision October 2005), "the applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." The applicant respectfully submits that this submission progresses the application, addresses the Examiner's concerns and places the application in a condition for allowance. In the alternative, this submission reduces the issues for appeal. Therefore, the applicant respectfully requests that the finality of the rejections be withdrawn (and that the amendment be entered).

Claims 1-67 appear in this amendment for the Examiner's review. No new claims have been added.

Claims 19-20 are currently amended to correct inadvertent, previously unnoticed typographical errors.

Claims 1, 9-11, 14, 16-18, 21-24, 27-42, 45, 50, 52-53, 57, 60 and 65-67 have been previously presented.

Claims 2-8, 12-13, 15, 25-26, 43-44, 46-49, 51, 54-56, 58-59 and 61-64 are original.

Claims Rejections – Compliance with 35 U.S.C. §102(b)

As stated in Paragraph 2 of the March 22, 2006 Office Action, the 35 U.S.C. §102(b) rejection of Claims 1-4, 6-13 and 17-23 as allegedly being anticipated by U.S. Patent No. 5,874,155 to Gehrke, et al. ("Gehrke et al."), of record on page 2 of the July 1, 2005 Office Action, is repeated. The applicant respectfully requests the Examiner withdraw the rejection in view of the following remarks.

Paragraph 4 of the July 1, 2005 Office Action states,

Gehrke et al disclose a flexible multilayer packaging film (flexible packaging laminate; column 2, lines 56-64) comprising a film, therefore having an

internal surface and external surface comprising a biaxially oriented polymer comprising polyamide (biaxially oriented nylon; column 4, lines 5-11), comprising a surface-roughened portion (column 5, lines 20-24) comprising score lines (cuts; column 4, lines 46-49) on its external surface (surface facing up; column 5, lines 7-9); the multilayer film comprises multiple layers, therefore three layers, of the film (column 5, lines 41-45), and is adhered by adhesive lamination (column 5, lines 52-55); the film therefore comprises a **first film layer** comprising a first biaxially oriented polymer **having a surface roughened portion** on its external surface, a second film layer comprising adhesive positioned between the second film layer and third film layer, third film layer which is a polyamide, and therefore a barrier layer, and is positioned between the second film layer and fourth film layer, and a **fourth film layer** having a second biaxially oriented polymer and having an external surface **comprising a score line**. (Emphasis added.)

The applicant respectfully submits that, contrary to the above paragraph, Gehrke et al. do not disclose a first film layer having a surface roughened portion layer and a fourth film layer comprising a score line. Gehrke et al. do not disclose the separate, unique, distinct elements of a surface-roughened portion and at least one score line.

Figure 1 in Gehrke et al. is disclosed as a sheet with a "plurality of minute cuts or nicks 7 that are located over substantially the entire surface area of sheet 5 to create the easy-opening feature of the invention" (Column 4, lines 46-49, as cited in the above paragraph from the July 1, 2005 Office Action). Figure 2 (specifically explained at Column 5, lines 20-24, as cited in the above paragraph from the July 1, 2005 Office Action) discloses the manner in which these cuts or nicks or knurling or roughening may be made in the surface:

Surface 33 may contain a wire structure, bristles as in a brush, a grindstone, a grainy substance, or other similar structure which roughens the surface 14A of film 14 to produce the roughened surface 14A'. As roller 32 rotates and surface 33 comes into contact with surface 14A of film 14, roller 32 produces a roughening or knurling over substantially the entire area of surface 14A of film 14.

As further explained in Gehrke et al. at Column 2, lines 32-37,

It has now been found that an effective and practical method of creating an easy-opening package made of polymeric or flexible materials is to **roughen** or **knurl** the entire surface of the structure by applying a series of overall **nicks** or minute **cuts** over substantially the entire area of the outer layer of the structure. (Emphasis added.)

The applicant respectfully submits that Gehrke et al. equate roughening and knurling with nicks and cuts. Roughening and knurling are not distinguished from nicks and cuts. They are not separate elements of the invention. Gehrke et al. use the four terms synonymously.

Furthermore, Gehrke et al. disclose only one layer with roughening, knurling, nicks or cuts.

The easy-opening packages of the invention are obtained by roughening or knurling the entire surface of the packaging material of the invention. The surface roughening is achieved by application of a series of small nicks or minute cuts in a film or laminate which is then used as **an outer layer of the package**. (Column 3, lines 3-8, emphasis added.)

The **outer surface of the layer of base polymer** may then be subjected to surface roughening of the easy-opening feature of the invention. (Column 5, lines 31-33, emphasis added.)

The **surface 71A of layer 71** contains the easy-opening feature of the invention. Substantially the **entire surface of surface 71A** is roughened or knurled by the application of a series of small nicks or minute cuts in the laminate. (Column 6, lines 52-56, emphasis added.)

FIG. 9 depicts a package or a pouch 100 made from a multilayer polymeric film or packaging material in which the laminate of the invention is used as **an outer layer 104**. (Column 8, lines 27-29, emphasis added.)

The laminate of the invention 116 is used as **an outer layer for package 110**. (Column 8, lines 42-43, emphasis added.)

Outer layer 126 includes a laminate that has been subjected to the nicks or minute cuts described in this application as a method of creating an easy opening feature. (Column 8, lines 54-56, emphasis added.)

While Gehrke et al. disclose other layers, such as an adhesive layer, a sealant layer, a foil layer, etc., it does not directly disclose or indirectly suggest a roughening or a

scoring on any layer but the outer surface of a first layer. As further disclosed in Claim 1, any roughening or knurling or nicks or cuts is limited to a first layer: "a first layer, constituting the outer layer of said packaging material having first and second surfaces, said first surface being roughened over substantially the entire surface area of said first surface."

Gehrke et al. do not disclose a flexible multilayer packaging film with a first film layer comprising a surface-roughened portion **and** a fourth film layer comprising at least one score-line. Therefore, Gehrke et al. do not disclose each and every element present in and arranged as required by Claims 1-4, 6-13 and 17-23. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).) Additionally, "[t]he elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required" (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).) The applicant respectfully submits that Claims 1-4, 6-13 and 17-23 are patentable over Gehrke et al. and respectfully requests that the Examiner withdraw the 35 U.S.C. §102(b) rejection to these claims.

Claims Rejections – Compliance with 35 U.S.C. §103(a)

As stated in Paragraph 3 of the March 22, 2006 Office Action, the 35 U.S.C. §103(a) rejection of Claim 5 as allegedly being unpatentable over U.S. Patent No. 5,874,155 to Gehrke, et al. ("Gehrke et al"), of record on page 3 of the July 1, 2005 Office Action, is repeated. The applicant respectfully requests the Examiner withdraw the rejection in view of the following remarks.

Paragraph 6 of the July 1, 2005 Office Action states,

Gehrke et al. fails to disclose a score line having a depth of from 50-95% of the thickness of the layer. However, Gehrke et al. teaches the selection of the depth of the score line depending on the desired barrier properties of the film (a perforation, which penetrates the film, is unsuitable because it allows

product environment changes, within the film; column 1, lines 42-48).

Therefore, one of ordinary skill in the art would have recognized the utility of varying the depth of the score line to obtain the desired barrier properties.

Therefore, the barrier properties would be readily determined by through routine optimization of the depth of the score line by one having ordinary skill in the art depending on the desired use of the end product as taught by Gehrke et al.

The applicant respectfully requests that the Examiner provide additional explanation as to how a teaching away from the use of perforations for a tear line through a multilayer laminate film as a whole motivates one of ordinary skill in the art to vary the depth of a score line in one layer of a multilayer laminate film to obtain desired barrier properties. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. 'The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.'" (M.P.E.P. §2143.01 Eighth Edition, August 2001, Latest Revision October 2005, quoting In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).) Additionally, "a prior art reference must be considered in its entirety, i.e., as a **whole**, including portions that would lead away from the claimed invention." (M.P.E.P. § 2141.02 Eighth Edition, August 2001, Latest Revision October 2005, citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).)

Furthermore, as discussed above, Gehrke et al. do not disclose a flexible multilayer packaging film with a first film layer comprising a surface-roughened portion **and** a fourth film layer comprising at least one score-line. Gehrke et al. do not disclose all the claim limitations of Claim 5 (as it depends from Claim 1). "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." (M.P.E.P. §2143.03 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).) The applicant respectfully submits that Claim 5 is

patentable over Gehrke et al. and respectfully requests that the Examiner withdraw the 35 U.S.C. §103(a) rejection to this claim.

As stated in Paragraph 4 of the March 22, 2006 Office Action, the 35 U.S.C. §103(a) rejection of Claims 14-16 and 24-67 as allegedly being unpatentable over U.S. Patent No. 5,874,155 to Gehrke, et al. ("Gehrke et al") in view of U.S. Patent No. 5,783,266 to Gehrke ("Gehrke"), of record on page 4 of the July 1, 2005 Office Action, is repeated. The applicant respectfully requests the Examiner withdraw the rejection in view of the following remarks.

Paragraph 7 of the July 1, 2005 Office Action states,

Gehrke et al fail to disclose a barrier layer comprising a metallic coating on the external surface of the fourth film layer have a thickness from 200-700 Angstroms. Gehrke teaches that a **metallic coating** (thin layer of metal formed by deposition; column 3, lines 27-32) is used interchangeably with polyamide (nylon; column 3, lines 27-32) as a barrier layer in a film (column 3, lines 27-32) for the purpose of obtaining a film that is a barrier to oxygen and moisture (column 3, lines 32-35). (Emphasis added.)

Gehrke appears to be relied upon solely for disclosure regarding a metallic coating. Gehrke does not disclose – either alone or in combination with Gehrke et al. – a flexible multilayer packaging film with a first film layer comprising a surface-roughened portion **and** a fourth film layer comprising at least one score-line. As stated earlier, "to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." (M.P.E.P. §2143.03 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).) The applicant respectfully submits that a combination of Gehrke et al. and Gehrke does not teach or suggest all of the limitations of Claims 14-16 and 24-67. Therefore, the applicant respectfully submits that Claims 14-16 and 24-67 are patentable over these references and respectfully requests that the Examiner withdraw the 35 U.S.C. §103(a) rejection to these claims.


Conclusion

In view of the above remarks, the applicant submits that the claims are patentable and in condition for allowance. The applicant respectfully requests that the Examiner withdraw the finality of the rejections, withdraw the outstanding rejections and enter the amendment.

If a telephone conference would expedite allowance of the claims, the Examiner may contact the applicant via applicant's attorney at (920) 303-7970.

Respectfully submitted,

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